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FIRST DIVISION

[G.R. No. 123552. February 27, 2003]

TWIN TOWERS CONDOMINIUM CORPORATION, *petitioner, vs.* **THE COURT OF APPEALS, ALS MANAGEMENT & DEVELOPMENT CORPORATION, ANTONIO LITONJUA and SECURITIES AND EXCHANGE COMMISSION,** *respondents.*

SYNOPSIS

Petitioner sought to nullify the decision of the Court of Appeals dismissing its appeal from the Decision *en banc* of the Securities and Exchange Commission which reversed the order of the SEC Hearing Officer. The Court of Appeals dismissed the appeal for lack of merit and for non-compliance with the requirement on certification of non-forum shopping. In its Decision, the Court of Appeals, among others, sustained the claim of petitioner against respondent ALS for unpaid assessments and dues, but ruled that there is a need to remand the case for further reception of evidence and for determination of the exact amount of respondent ALS's liability to petitioner. It, however, directed the SEC Hearing Officer to deduct from respondent ALS's unpaid assessments and dues, the value of the services denied to respondent ALS because of the latter's non-use of the Condominium facilities.

On its part, respondent ALS maintained that the denial by petitioner of the use of condominium facilities deprived petitioner of any right to demand payment of assessments and dues.

The Supreme Court found the petition partly meritorious. It held that the Court of Appeals did not err in dismissing the petition for the procedural lapse. However, in the interest of justice, it reinstated the petition.

The Court held that petitioner's denial to respondent ALS of the Condominium facilities, after respondent ALS had defaulted, does not constitute a valid ground to refuse paying

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its assessments and dues. Records clearly showed that before respondent ALS incurred its arrearages, petitioner allowed it to use the facilities. However, respondent ALS subsequently defaulted and thus incurred delay. It was only then that petitioner disallowed respondents ALS and Litonjua from using the facilities. The denial of the use of the facilities was the sanction for the prior default incurred by respondent ALS. In reciprocal obligations, when one party fulfills his obligation, and the other does not, delay by the other begins. Moreover, when one party does not comply with his obligation, the other party does not incur delay if he does not perform his own reciprocal obligation because of the first party's non-compliance. The Court, therefore, held that respondent ALS has no right to a reduction of its assessments and dues to the extent of its non-use of the Condominium facilities. Respondent ALS also cannot offset damages against its assessments and dues because it is not entitled to damages for alleged injury arising from its own violation of its contract. Such a breach of contract cannot be the source of rights or the basis of a cause of action. To recognize the validity of such claim would be to legalize respondent ALS's breach of its contract.

The Court, however, held that the case could no longer be remanded to the SEC hearing Officer. Republic Act No. 8799 transferred SEC's jurisdiction over cases involving intra-corporate disputes to courts of general jurisdiction or the appropriate Regional Trial Court.

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; FORUM SHOPPING; CERTIFICATION OF NON-FORUM SHOPPING; A MANDATORY REQUIREMENT BUT MUST NOT BE INTERPRETED TOO LITERALLY TO DEFEAT THE ENDS OF JUSTICE; CASE AT BAR.**— Petitioner filed its petition for review with the Court of Appeals on August 18, 1993 and its amended petition on September 3, 1993. Both the original and amended petitions were filed before the effectivity of Revised Administrative Circular No. 1-95 on June 1, 1995. However, contrary to petitioner's claim, before the issuance of Revised Administrative Circular No. 1-95, there was already

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an existing circular requiring a sworn certification of non-forum shopping from a party filing a petition for review with the Court of Appeals. Circular No. 28-91, which took effect on January 1, 1992, required a sworn certification of non-forum shopping in cases filed with the Court of Appeals and the Supreme Court. Circular No. 28-91 specifically provides for summary dismissal of petitions which do not contain a sworn certification of non-forum shopping. Clearly, petitioner cannot claim that at the time of the filing of its petitions with the Court of Appeals, it was not required under any existing Supreme Court Circular to include in its petitions a sworn certification of non-forum shopping. Circular No. 28-91 applies in the instant case, being the Circular in force at the time. Petitioner cannot even feign ignorance of Circular No. 28-91 as its petitions were filed more than one year after the Circular's effectivity. The rule against forum shopping has long been established and Circular No. 28-91 merely formalized the prohibition and provided the appropriate penalties against violators. The Court of Appeals did not err in dismissing the petition for this procedural lapse. However, special circumstances or compelling reasons may justify relaxing the rule requiring certification on non-forum shopping. Technical rules of procedure should be used to promote, not frustrate justice. While the swift unclogging of court dockets is a laudable objective, granting substantial justice is an even more urgent ideal. The certificate of non-forum shopping is a mandatory requirement. Nonetheless, this requirement must not be interpreted too literally to defeat the ends of justice. In the instant case, the merits of petitioner's case should be considered special circumstances or compelling reasons that justify tempering the hard consequence of the procedural requirement on non-forum shopping. In the interest of justice, we reinstate the petition.

2. **ID.; APPEALS; AN ISSUE NOT RAISED DURING TRIAL COULD NOT BE RAISED FOR THE FIRST TIME ON APPEAL.**— The issue on the validity of House Rule 26.3 was raised for the first time on appeal. It is settled that an issue not raised during trial could not be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play, justice, and due process. Nonetheless, the Court of Appeals opted to address this issue.

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3. **ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI*; RE-EXAMINATION OF THE EVIDENCE SUBMITTED BY THE PARTIES NOT THE FUNCTION OF THE SUPREME COURT; FINDINGS OF FACT OF THE COURT OF APPEALS AND OTHER COURTS OF ORIGIN ARE CONCLUSIVE.**— The question of whether petitioner's claim of ₱994,529.75 for unpaid assessments and dues against ALS is supported by sufficient evidence is a purely factual issue and inevitably requires the weighing of evidence. This Court is not a trier of facts, and it is not the function of this Court to re-examine the evidence submitted by the parties. In cases brought before this Court from the Court of Appeals under Rule 45 of the Rules of Court, this Court's jurisdiction is limited to reviewing errors of law which must be distinctly set forth. In this mode of appeal, the findings of fact of the Court of Appeals and other courts of origin are conclusive.

4. **ID.; ID.; ID.; LIMITED TO THE REVIEW AND REVISION OF ERRORS OF LAW; FINDINGS OF FACT OF THE COURT OF APPEALS ARE DEEMED CONCLUSIVE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.**— Jurisprudence is settled that: "(a)s a rule, the jurisdiction of this Court in cases brought to it from the Court of Appeals xxx is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. As such this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below." This rule admits of several exceptions. This Court may review the findings of fact of the Court of Appeals: "(a) where there is grave abuse of discretion; (b) when the finding is grounded entirely on speculations, surmises or conjectures; (c) when the inference made is manifestly mistaken, absurd or impossible; (d) when the judgment of the Court of Appeals was based on a misapprehension of facts; (e) when the factual findings are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; (g) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and, (h) where the findings of fact of the Court of Appeals are contrary to

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those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record." However, none of these exceptions exists in the instant case.

5. **ID.; ID.; ID.; ONLY ERRORS OF LAW MAY BE RAISED THEREIN; CASE AT BAR.**— The SEC Hearing Officer found that, while petitioner is entitled to collect the unpaid assessments and dues from ALS, petitioner has failed to establish clearly the basis for computing the correct amount of the unpaid assessments and dues. Indeed, there is no evidence laying down the basis of petitioner's claim other than allegations of previous demands and statements of accounts. Whether petitioner has sufficiently established its claim by preponderance of evidence requires an examination of the probative weight of the evidence presented by the parties. Evidently, this is a question of fact the resolution of which is beyond the purview of the petition for review where only errors of law may be raised. On the other hand, the decision of the Court of Appeals, finding insufficient evidence on record, was made under its power to review both questions of fact and law.

6. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; RECIPROCAL OBLIGATIONS; WHEN ONE PARTY DOES NOT COMPLY WITH HIS OBLIGATION, THE OTHER PARTY DOES NOT INCUR DELAY IF HE DOES NOT PERFORM HIS OWN RECIPROCAL OBLIGATION BECAUSE OF THE FIRST PARTY'S NON-COMPLIANCE; CASE AT BAR.**— ALS asserts that the denial by petitioner to ALS and Litonjua of the use of the Condominium facilities deprived petitioner of any right to demand from ALS payment of any condominium assessments and dues. ALS contends that the right to demand payment of assessments and dues carries with it the correlative obligation to allow the use of the Condominium facilities. ALS is correct if it had not defaulted on its assessment and dues before the denial of the use of the facilities. However, the records clearly show that petitioner denied ALS and Litonjua the use of the facilities only *after* ALS had defaulted on its obligation to pay the assessments and dues. The denial of the

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use of the facilities was the sanction for the prior default incurred by ALS. In essence, what ALS wants is to use its own prior non-payment as a justification for its future non-payment of its assessments and dues. Stated another way, ALS advances the argument that a contracting party who is guilty of first breaching his obligation is excused from such breach if the other party retaliates by refusing to comply with his own obligation. This obviously is not the law. In reciprocal obligations, when one party' fulfills his obligation, and the other does not, delay by the other begins. Moreover, when one party does not comply with his obligation, the other party does not incur delay if he does not perform his own reciprocal obligation because of the first party's non-compliance. This is embodied in Article 1169 of the Civil Code, the relevant provision of which reads: "In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins." Thus, before ALS incurred its arrearages, petitioner allowed ALS to use the facilities. However, ALS subsequently defaulted and thus incurred delay. It was only then that petitioner disallowed ALS and Litonjua from using the facilities. Clearly, petitioner's denial to ALS of the Condominium facilities, after ALS had defaulted, does not constitute a valid ground on the part of ALS to refuse paying its assessments and dues.

7. **ID.; ID.; CONTRACTS; BREACH OF CONTRACT; CANNOT BE THE SOURCE OF RIGHTS OR THE BASIS OF THE CAUSE OF ACTION.**— We rule that ALS has no right to a reduction of its assessments and dues to the extent of its non-use of the Condominium facilities. ALS also cannot offset damages against its assessments and dues because ALS is not entitled to damages for alleged injury arising from its own violation of its contract. Such a breach of contract cannot be the source of rights or the basis of a cause of action. To recognize the validity of such claim would be to legalize ALS' breach of its contract.

8. **ID.; ID.; ID.; HAVE THE FORCE OF LAW BETWEEN THE PARTIES AND ARE TO BE COMPLIED WITH IN GOOD FAITH.**— The Master Deed binds ALS since the Master Deed is annotated on the condominium certificate of title of ALS'

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Unit. The Master Deed is ALS' contract with all Condominium members who are all co-owners of the common areas and facilities of the Condominium. Contracts have the force of law between the parties and are to be complied with in good faith. From the moment the contract is perfected, the parties are bound to comply with what is expressly stipulated as well as with what is required by the nature of the obligation in keeping with good faith, usage and the law. Thus, when ALS purchased its Unit from petitioner, ALS was bound by the terms and conditions set forth in the contract, including the stipulations in the House Rules of petitioner, such as House Rule 26.2.

9. **ID.; ID.; ESTOPPEL; RESPONDENT'S CLAIM FOR UNRENDERED REPAIR SERVICES BARRED BY ESTOPPEL; NO QUESTION WILL BE ENTERTAINED ON APPEAL UNLESS IT HAS BEEN RAISED IN THE COURT BELOW.**— Neither in the proceedings in the SEC nor in the appellate court did ALS present evidence to substantiate its allegation that petitioner failed to render the repair services. Also, ALS failed to establish whether it claimed for the costs of the repair because ALS advanced these expenses, or for the value of damages caused to the Unit by the water leakage. ALS is therefore barred at this late stage to interpose this claim. In *Del Rosario v. Bonga,* the Court held: "As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule." As this claim was a separate cause of action which should have been raised in ALS' Answer with Counterclaim, ALS' failure to raise this claim is deemed a waiver of the claim.

10. **ID.; DAMAGES; INTEREST AND PENALTIES IMPOSED UNDER HOUSE RULE 26.2 CONSIDERED REASONABLE IN CASE AT BAR.**— ALS and Litonjua did not question before either the SEC or the Court of Appeals the validity of the penalties prescribed in the Condominium's House Rule 26.2. Nevertheless, the Court of Appeals ruled that House Rule 26.2 prescribes grossly excessive penalties and interests. The resolution of this issue is not necessary in arriving at a complete

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and just resolution of this case. At any rate, we find the interest and penalties prescribed under House Rule 26.2 reasonable considering the premier location of the Condominium at the heart of Makati City. It is inevitable that ALS' unpaid assessments and dues would escalate because ALS' delinquency started since 1986. House Rule 26.2 clearly provides for a 24% interest and an 8% penalty, both running annually, on the total amount due in case of failure to pay, to wit: x x x. To reiterate, the Condominium Act expressly provides that the Master Deed may empower the management body of the Condominium "to enforce the provisions of the declaration of restrictions." The Master Deed authorizes petitioner, as the management body, to enforce the provisions of the Master Deed in accordance with petitioner's By-Laws. Thus, petitioner's Board of Directors is authorized to determine the reasonableness of the penalties and interests to be imposed against those who violate the Master Deed. Petitioner has validly done this by adopting the House Rules.

11. **ID.; ID.; ATTORNEY'S FEES; MAY BE AWARDED WHERE THE DEFENDANT ACTED IN GROSS AND EVIDENT BAD FAITH.**— The award of attorney's fees as damages is the exception rather than the rule. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. Counsel's fees are not awarded every time a party prevails in a suit. An award of attorney's fees and expenses of litigation is proper under the instances provided for in Article 2208 of the Civil Code, one of which is where the defendant acted in gross and evident bad faith. In this case, however, we find no cogent reason to award attorney's fees in the absence of showing of gross and evident bad faith on the part of ALS in refusing to satisfy petitioner's claim.

12. **COMMERCIAL LAW; SECURITIES AND EXCHANGE COMMISSION; JURISDICTION THEREOF OVER CASES INVOLVING INTRA-CORPORATE DISPUTES TRANSFERRED TO THE COURTS OF GENERAL JURISDICTION OR THE APPROPRIATE REGIONAL TRIAL COURTS.**— While we sustain the ruling of the Court of Appeals, the case can no longer be remanded to the SEC Hearing Officer. Republic Act No. 8799, which took effect

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on August 8, 2000, transferred SEC's jurisdiction over cases involving intra-corporate disputes to courts of general jurisdiction or the appropriate regional trial courts. Section 5.2 of R.A. No. 8799 reads: "5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court; Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed." Based on the Resolution issued by this Court in AM No. 00-8-10-SC, the Court Administrator and the Securities and Exchange Commission should cause the transfer of the records of SEC-AC Nos. 377 and 378 to the proper regional trial court for further reception of evidence and computation of the correct amount of assessments and dues that ALS shall pay to petitioner.

13. **ID.; CORPORATION CODE; CORPORATIONS; *ULTRA VIRES* ACT, DEFINED.**— Section 45 of the Corporation Code provides: "Sec. 45. *Ultra vires* acts of corporations. - No corporation under this code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred." The term *ultra vires* refers to an act outside or beyond corporate powers, including those that may ostensibly be within such powers but are, by general or special laws, prohibited or declared illegal. The Corporation Code defines an *ultra vires* act as one outside the powers conferred by the Code or by the Articles of Incorporation, or beyond what is necessary or incidental to the exercise of the powers so conferred. Moreover, special laws governing certain classes of corporations, like the Condominium Act, also grant specific corporate powers to corporations falling under such special laws.

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14. **ID.; ID.; ID.; CONDOMINIUM ACT; HOUSE RULE 26.3 CONSIDERED VALID IN CASE AT BAR; PETITIONER CORPORATION HAS EXPRESS POWER TO PROMULGATE RULES AND REGULATIONS CONCERNING THE USE, ENJOYMENT AND OCCUPANCY OF THE COMMON AREAS.**— We rule that House Rule 26.3 is valid. The Condominium Act, petitioner's By-Laws and the Master Deed *expressly* empower petitioner to promulgate House Rule 26.3. Section 9 of the Condominium Act provides: x x x. The Condominium Act clearly provides that the Master Deed may expressly empower the management body, petitioner in the instant case, to enforce all provisions in the Master Deed and Declaration of Restrictions. Pursuant to Section 9 (a) (1) and (3) of the Condominium Act, the Master Deed expressly authorizes petitioner to exercise all the powers granted to the management body by the Condominium Act, petitioner's Articles of Incorporation and By-Laws, the Master Deed, and the Corporation Code. Section 3, Part II of the Master Deed reads: x x x. Thus, the Master Deed clearly empowers petitioner to enforce the provisions of the Master Deed in accordance with petitioner's By-Laws. Petitioner's By-Laws expressly authorize petitioner's Board of Directors to promulgate rules and regulations on the use and enjoyment of the common areas. Thus, paragraph 2, Section 2 of petitioner's By-Laws states: x x x. Evidently, the Condominium Act, the Master Deed and petitioner's By-Laws grant petitioner the express power to promulgate rules and regulations concerning the use, enjoyment and occupancy of the common areas.

15. **ID.; ID.; ID.; ID.; IMPOSITION OF TEMPORARY BAN ON THE USE OF COMMON AREAS AND FACILITIES UNTIL THE ASSESSMENTS AND DUES IN ARREARS ARE PAID IS A REASONABLE MEASURE THAT PETITIONER MAY UNDERTAKE TO COMPEL THE PROMPT PAYMENT OF ASSESSMENTS AND DUES.**— Moreover, House Rule 26.3, which prohibits delinquent members from using the common areas, is necessary to ensure maintenance of the common areas. Petitioner's purpose in enacting House Rule 26.3 is to enforce effectively the provisions of the Master Deed. House Rule 26.3 is well within the powers of petitioner to adopt as the same is reasonably necessary to attain the purpose for which both petitioner and the Condominium project were

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created. Thus, Section 7 of the Master Deed declares: x x x. Petitioner would be unable to carry out its main purpose of maintaining the Condominium common areas and facilities if members refuse to pay their dues and yet continue to use these areas and facilities. To impose a temporary ban on the use of the common areas and facilities until the assessments and dues in arrears are paid is a reasonable measure that petitioner may undertake to compel the prompt payment of assessments and dues.

APPEARANCES OF COUNSEL

Benitez Parlade Africa Herrera Parlade & Panga Law Ofices for petitioner.

Castillo Poblador for private respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before us is a petition for review on *certiorari*[1] to nullify the Decision[2] dated August 31, 1995 of the Court of Appeals and its Resolution[3] dated January 16, 1996 denying petitioner's motion for reconsideration. The Court of Appeals dismissed petitioner's appeal from the Decision *en banc*[4] of the Securities and Exchange Commission, which reversed the order of the SEC Hearing Officer.[5] The Court of Appeals dismissed the

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Justice Cancio C. Garcia and concurred in by Justices Arturo B. Buena and Eugenio S. Labitoria, *Rollo*, pp. 36-46.

[3] *Rollo*, p. 48.

[4] By Chairman Rosario N. Lopez and concurred in by Associate Commissioners Rodolfo L. Samarista, Merle O. Manuel, and Perfecto R. Yasay, Jr. Commissioner Fe Eloisa C. Gloria did not participate, CA Records, pp. 44-47.

[5] Rolando C. Malabonga, CA Records, pp. 29-43.

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appeal for lack of merit and for non-compliance with the requirement on certification of non-forum shopping.[6]

The Antecedent Facts

On June 30, 1988, petitioner Twin Towers Condominium Corporation ("petitioner" for brevity) filed a complaint[7] with the Securities and Exchange Commission ("SEC" for brevity) against respondents ALS Management & Development Corporation ("ALS" for brevity) and Antonio Litonjua ("Litonjua" for brevity). The complaint prayed that ALS and Litonjua be ordered to pay solidarily the unpaid condominium assessments and dues with interests and penalties covering the four quarters of 1986 and 1987 and the first quarter of 1988.

The complaint alleged, among others, that petitioner, a non-stock corporation, is organized for the sole purpose of holding title to and managing the common areas of Twin Towers Condominium ("Condominium" for brevity). Membership in petitioner corporation is compulsory and limited to all registered owners of units in the Condominium. ALS, as registered owner of Unit A-4 ("Unit" for brevity) of the Condominium, is a member of petitioner. Litonjua, who is the corporate president of ALS, occupies the Unit.

Petitioner collects from all its members quarterly assessments and dues as authorized by its Master Deed and Declaration of Restrictions ("Master Deed" for brevity) and its By-Laws. As of the filing of the complaint with the SEC, petitioner's records of account show that ALS failed to pay assessments and dues starting 1986 up to the first quarter of 1988. Petitioner claimed against both ALS and Litonjua ₱118,923.20 as unpaid assessments and dues. This amount includes accrued interests of ₱30,808.33 and penalty charges of ₱7,793.34, plus ₱1,500.00 as unpaid contingency fund assessment for 1987.[8]

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[6] Section 6 of Supreme Court Administrative Circular No. 1-95, and Section 1 of Supreme Court Revised Circular No. 28-91.

[7] Docketed as SEC CASE No. 3385.

[8] As of January 31, 1993, petitioner's claim against ALS amounted to ₱994,529.75 inclusive of the amount of ₱1,500.00 for the contingency fund

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In their joint Answer with Counterclaim, ALS and Litonjua asserted that petitioner failed to state a cause of action against Litonjua. ALS and Litonjua argued that petitioner's admission that ALS and not Litonjua is the registered owner of the Unit and member of petitioner exonerates Litonjua from any liability to petitioner. While ALS is a juridical person that cannot by itself physically occupy the Unit, the natural person who physically occupies the Unit does not assume the liability of ALS to petitioner. Neither does the agent who acts for the corporation become personally liable for the corporation's obligation.

As counterclaim, ALS claimed damages against petitioner arising from petitioner's act of repeatedly preventing ALS, its agents and guests from using the parking space, swimming pool, gym, and other facilities of the Condominium. In addition, Litonjua claimed damages against petitioner for the latter's act of including Litonjua's name in the list of delinquent unit owners which was posted on petitioner's bulletin board.[9]

On December 11, 1991, the SEC Hearing Officer ordered petitioner to pay Litonjua moral and exemplary damages for maliciously including Litonjua's name in the list of delinquent unit owners and for impleading him as a respondent. On the other hand, the SEC Hearing Officer ordered ALS to pay the assessments and dues to petitioner.[10] However, the Hearing Officer did not determine the exact amount to be paid by ALS because petitioner failed to lay down the basis for computing the unpaid assessments and dues.[11] The dispositive portion of the decision reads thus:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. Ordering respondent ALS to pay the legal assessments/dues due the complainant within thirty (30) days from finality of this Decision; and

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for 1987 plus accrued interest in the amount of ₱378,950.67 and penalty charges in the amount of ₱115,183.88; *Rollo*, p. 18.

[9] CA Records, pp. 22-23.

[10] *Ibid.*, p. 37.

[11] *Ibid.*

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2. Ordering the complainant to pay respondent Antonio Litonjua the sum of THREE HUNDRED THOUSAND PESOS (₱300,000.00) as moral damages, FIFTY THOUSAND PESOS (₱50,000.00) as exemplary damages, and TWO HUNDRED THOUSAND PESOS (₱200,000.00) as and by way of attorney's fees.

SO ORDERED."[12]

Not satisfied with the SEC Hearing Officer's decision, both parties filed their respective appeals to the SEC *en banc*.[13] Petitioner assailed the award of moral and exemplary damages as well as attorney's fees in favor of Litonjua. On the other hand, ALS appealed that portion of the decision ordering it to pay to petitioner the assessments and dues.

In a decision dated July 30, 1993, the SEC *en banc* nullified the award of damages and attorney's fees to Litonjua on the ground that the SEC had no jurisdiction over Litonjua. The SEC *en banc* held that there is no intra-corporate relationship between petitioner and Litonjua who is not the registered owner of the Unit and thus, not a member of petitioner. The SEC *en banc* stated that petitioner could not invoke the doctrine of piercing the veil of ALS' corporate fiction since disregarding the corporate entity is a function of the regular courts.

Furthermore, the SEC *en banc* remanded the case to the Hearing Officer to determine the value of the services petitioner failed to render to ALS because of the latter's non-use of the Condominium facilities. The SEC *en banc* ruled that the value of these services could be deducted from the unpaid assessments and dues that ALS owes petitioner.

Thus, the SEC *en banc* declared:

"WHEREFORE, in view of the foregoing, the order appealed from is hereby reversed insofar as it awards moral and exemplary damages and attorney's fees to respondent Litonjua as the same is

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[12] See note 5.

[13] The parties' respective recourses were docketed as SEC-AC Nos. 377 and 378.

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null and void for lack of jurisdiction of this Commission over the said party.[14]

As regards that portion of the appealed Order directing respondent ALS to pay the legal assessment/dues to the complainant TTC within thirty (30) [days] from finality of the said decision, the same is hereby modified by remanding the case to the hearing officer for *determination of the value of the services withheld* by the complainant TTC from respondent ALS in order that the same may be deducted from the amount of legal assessments and dues which the respondent corporation shall pay to the complainant.

SO ORDERED."[15] (Italics supplied)

Petitioner appealed the SEC *en banc* Decision to the Court of Appeals contending grave error or grave abuse of discretion by the SEC *en banc*.

The Ruling of the Court of Appeals

The Court of Appeals dismissed petitioner's appeal on both procedural and substantive grounds. Procedurally, the Court of Appeals found the petition defective for failure to contain a sworn certification of non-forum shopping as required by Section 6 of Administrative Circular No. 1-95 and Section 2 of Revised Circular No. 28-91.

On the merits, the Court of Appeals substantially affirmed the decision of the SEC *en banc* that there is no ground to pierce the veil of ALS' corporate fiction. The Court of Appeals held that there is nothing in the records to show that ALS is engaged in unlawful business or that Litonjua is using ALS to defraud third parties. The fact alone that ALS is in arrears in

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[14] Antonio Litonjua subsequently filed an action for damages against petitioner for the latter's act of including his name in the list of delinquent members posted on petitioner's bulletin board. On September 8, 1998, the Regional Trial Court of Pasig, Branch 166, in Civil Case No. 64115 entitled "*Antonio K. Litonjua v. Twin Towers Condominium et al.*" ordered Twin Towers Condominium to pay Litonjua the amount of ₱1,800,000.00 as damages; *Rollo*, pp. 159-160.

[15] See note 4.

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paying its assessments and dues does not make ALS or Litonjua guilty of fraud which would warrant piercing the corporate veil of ALS. Thus, it was improper for petitioner to post Litonjua's name instead of ALS' in the list of delinquent unit owners since Litonjua is not a member of petitioner.

The Court of Appeals also sustained the claim of petitioner against ALS for unpaid assessments and dues but found that petitioner failed to substantiate by preponderance of evidence the basis for computing the unpaid assessments and dues. Thus, the Court of Appeals remanded the case to the SEC Hearing Officer for further reception of evidence and for determination of the exact amount of ALS' liability to petitioner. The Court of Appeals, however, directed the SEC Hearing Officer to deduct from ALS' unpaid assessments and dues the value of the services denied to ALS because of the latter's non-use of the Condominium facilities. In allowing the deduction, the Court of Appeals declared the Condominium's House Rule 26.3 as *ultra* vires. House Rule 26.3, which petitioner claims as its basis for denying the use of the Condominium facilities to ALS, authorizes withholding of the use of the Condominium facilities from delinquent unit owners. The Court of Appeals, however, ruled that petitioner is not expressly authorized by its Master Deed and By-Laws to prohibit delinquent members from using the facilities of the Condominium.

The Court of Appeals went further and declared the interest and penalty charges prescribed by House Rule 26.5[16] on delinquent accounts as exorbitant or grossly excessive, although this was not raised as an issue. While in its complaint, petitioner sought to recover ₱118,923.20 as unpaid assessments and dues, in its amended petition for review, petitioner sought ₱994,529.75, more than eight times the amount it originally claimed from ALS.[17]

In the dispositive portion of its assailed decision, the Court of Appeals declared:

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[16] This should read as 26.2, *Rollo*, p. 177.

[17] *Rollo*, p. 45.

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"WHEREFORE, the instant petition is hereby DENIED and is accordingly DISMISSED."[18]

Hence, this petition.

The Issues

In its Memorandum, petitioner assigns the following errors in the decision of the Court of Appeals:

1. "IN DISMISSING THE PETITION ALLEGEDLY BECAUSE OF PETITIONER'S FAILURE TO COMPLY WITH THE PERTINENT PROVISIONS OF SUPREME COURT CIRCULAR NOS. 1-95 AND 28-91 ON THE CERTIFICATION AGAINST FORUM SHOPPING;"
2. "IN ORDERING A REMAND OF THE CASE BACK TO THE HEARING OFFICER FOR THE RECEPTION OF EVIDENCE FOR SERVICES SUPPOSEDLY NOT RENDERED BY PETITIONER;"
3. "IN DECLARING HOUSE RULE NO. 26.3 AS *ULTRA* VIRES;"
4. "IN FINDING THE PENALTIES AND INTERESTS PRESCRIBED IN HOUSE RULE 26.5[19] AS EXORBITANT AND GROSSLY EXCESSIVE;"
5. "IN REFUSING TO RECOGNIZE THE FACT THAT RESPONDENT LITONJUA AND NOT ALS IS THE REAL OWNER OF APARTMENT UNIT 4-A;" and
6. "IN FAILING TO FIND THAT THERE IS ON RECORD OVERWHELMING EVIDENCE TO SHOW THE BASIS OF THE DUES AND ASSESSMENTS BEING COLLECTED FROM THE PRIVATE RESPONDENTS."[20]

The Ruling of the Court

The petition is partly meritorious.

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[18] *Rollo*, p. 46.

[19] *Supra*, see note 16.

[20] *Rollo*, p. 174.

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A perusal of the foregoing issues readily reveals that petitioner raises two aspects of the case for consideration — the procedural aspect and the substantive aspect.

We will discuss the procedural aspect first.

Non-compliance with Supreme Court Circular No. 1-95 and Revised Circular No. 28-91.

Petitioner submits that the Court of Appeals erred in dismissing its appeal for non-compliance with Supreme Court Circular No. 1-95 and Revised Circular No. 28-91. Petitioner asserts that when it filed its petition, both circulars were not yet in full force.

Petitioner filed its petition for review with the Court of Appeals on August 18, 1993 and its amended petition on September 3, 1993. Both the original and amended petitions were filed before the effectivity of Revised Administrative Circular No. 1-95 on June 1, 1995. However, contrary to petitioner's claim, before the issuance of Revised Administrative Circular No. 1-95, there was already an existing circular requiring a sworn certification of non-forum shopping from a party filing a petition for review with the Court of Appeals.

Circular No. 28-91, which took effect on January 1, 1992, required a sworn certification of non-forum shopping in cases filed with the Court of Appeals and the Supreme Court. Circular No. 28-91 specifically provides for summary dismissal of petitions which do not contain a sworn certification of non-forum shopping. Sections 2 and 3 of Circular No. 28-91 state:

"2. *Certification* — The party must certify under oath that he has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency, and that to the best of his knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency. If there is any action pending, he must state the status of the same. If he should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different Divisions thereof, or any

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other tribunal or agency, he should notify the court, tribunal or agency within five (5) days from such notice.

3. *Penalties* —

a. Any violation of this Circular shall be a cause for the summary dismissal of the multiple petition or complaint.

x x x x x x x x x."

Clearly, petitioner cannot claim that at the time of the filing of its petitions with the Court of Appeals, it was not required under any existing Supreme Court Circular to include in its petitions a sworn certification of non-forum shopping. Circular No. 28-91 applies in the instant case, being the Circular in force at the time. Petitioner cannot even feign ignorance of Circular No. 28-91 as its petitions were filed more than one year after the Circular's effectivity. The rule against forum shopping has long been established and Circular No. 28-91 merely formalized the prohibition and provided the appropriate penalties against violators.[21]

The Court of Appeals did not err in dismissing the petition for this procedural lapse. However, special circumstances or compelling reasons may justify relaxing the rule requiring certification on non-forum shopping.[22] Technical rules of procedure should be used to promote, not frustrate justice. While the swift unclogging of court dockets is a laudable objective, granting substantial justice is an even more urgent ideal.[23] The certificate of non-forum shopping is a mandatory requirement. Nonetheless, this requirement must not be interpreted too literally to defeat the ends of justice.[24]

In the instant case, the merits of petitioner's case should be considered special circumstances or compelling reasons that justify tempering the hard consequence of the procedural requirement

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[21] *Chemphil Export and Import Corp. v. CA*, 251 SCRA 257 (1995).

[22] *Shipside Inc. v. CA*, 352 SCRA 334 (2001).

[23] *Ibid.*

[24] *Ibid.*; *Bernardo v. NLRC*, 255 SCRA 108 (1996).

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on non-forum shopping. In the interest of justice, we reinstate the petition.

Essentially, the substantive issues for resolution in the instant petition can be summarized into four, as follows:

1. Whether petitioner can collect assessments and dues despite its denial to ALS of the use of the Condominium facilities pursuant to House Rule 26.3;

2. Whether ALS can validly offset against its unpaid assessments and dues the value of the services withheld by petitioner;

3. Whether a remand of the case to the proper trial court is necessary to determine the amounts involved; and

4. Whether the penalties prescribed in House Rule 26.2 are grossly excessive and exorbitant.

First Issue: Payment of assessments and dues.

Petitioner's authority to assess dues.

Petitioner was organized to hold title to the common areas of the Condominium and to act as its management body. The Condominium Act, the law governing condominiums, states that:

> "Title to the common areas, including the land, or the appurtenant interests in such areas, may be held by a corporation specially formed for the purpose (hereinafter known as the "condominium corporation") in which the holders of separate interests shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas x x x"[25]

The Condominium Act provides that the Master Deed may authorize the condominium corporation to collect "reasonable assessments to meet authorized expenditures."[26] For this purpose, each unit owner "may be assessed separately for its share of such expenditures in proportion (unless otherwise provided) to

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[25] Section 2, Republic Act No. 4726.

[26] *Ibid.*, Section 9 (d).

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its owner's fractional interest in the common areas."[27] Also, Section 20 of the Condominium Act declares:

"Section 20. An assessment upon any condominium made *in accordance with a duly registered declaration of restrictions shall be an obligation of the owner* thereof at the time the assessment is made x x x" (Italics supplied)

Petitioner is expressly authorized by its Master Deed to impose reasonable assessments on its members to maintain the common areas and facilities of the Condominium. Section 4, Part II of petitioner's Master Deed provides:

"Section 4. *ASSESSMENTS.* — From and after date Ayala Investment & Development Corporation formally conveys the condominium project to the Condominium Corporation, *the owner of each unit shall be proportionately liable for the common expenses of the condominium project, which shall be assessed against each unit owner in the project and paid to the Condominium Corporation* as provided in Part I Section 8 (b) hereof at such times and in such manner as shall be provided in the By-Laws of the Condominium Corporation,

a.) *Regular assessments for such amounts as shall be necessary to meet the operating expenses of the Condominium Corporation* as well as such amounts, determined in accordance with the provisions of the By-Laws, to be made for the purpose of creating and maintaining a special fund for capital expenditures on the common areas of the project; including the cost of extraordinary repairs, reconstruction or restoration necessitated by damage, depreciation, obsolescence, expropriation or condemnation of the common areas or part thereof, as well as the cost of improvements or additions thereto authorized in accordance with the provisions of the By-Laws;

b.) x x x x x x x x x

c.) There may be assessed against the unit owners, in the manner prescribed herein or in the By-Laws of the Condominium Corporation, *such other assessments as are not specifically provided for herein;*

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[27] *Ibid.*

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d.) The amount of any such assessment, plus interest penalties, attorney's fees and other charges incurred for the collection of such assessment, shall constitute a lien upon the unit and on the appurtenant interest of the unit owner in the Condominium Corporation. Such lien shall be constituted in the manner provided in the By-Laws of the Condominium Corporation. The foreclosure, transfer of conveyance, as well as redemption of the unit shall include the unit owner's appurtenant interest in the Condominium Corporation. The Condominium Corporation shall have the power to bid at the foreclosure sale."[28]

Thus, petitioner's right to collect assessments and dues from its members and the corollary obligation of its members to pay are beyond dispute.

There is also no question that ALS is a member of petitioner considering that ALS is the registered owner of the Unit. Under the automatic exclusive membership clause in the Master Deed,[29] ALS became a regular member of petitioner upon its acquisition of a unit in the Condominium.

As a member of petitioner, ALS assumed the compulsory obligation to share in the common expenses of the Condominium. This compulsory obligation is further emphasized in Section 8, paragraph c, Part I of the Master Deed, to wit:

"Each member of the Condominium Corporation *shall share in the common expenses* of the condominium project in the same sharing or percentage stated x x x"[30] (Italics supplied)

Undoubtedly, as a member of petitioner, ALS is legally bound to pay petitioner assessments and dues to maintain the common areas and facilities of the Condominium. ALS' obligation arises from both the law and its contract with the Condominium developer and other unit owners.

Petitioner's Master Deed provides that a member of the Condominium corporation shall share in the common expenses

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[28] *Rollo*, pp. 104-105.

[29] *Ibid.*, p. 103.

[30] *Ibid.*, p. 104.

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of the condominium project.[31] This obligation does not depend on the use or non-use by the member of the common areas and facilities of the Condominium. Whether or not a member uses the common areas or facilities, these areas and facilities will have to be maintained. Expenditures must be made to maintain the common areas and facilities whether a member uses them frequently, infrequently or never at all.

ALS asserts that the denial by petitioner to ALS and Litonjua of the use of the Condominium facilities deprived petitioner of any right to demand from ALS payment of any condominium assessments and dues. ALS contends that the right to demand payment of assessments and dues carries with it the correlative obligation to allow the use of the Condominium facilities. ALS is correct if it had not defaulted on its assessment and dues before the denial of the use of the facilities. However, the records clearly show that petitioner denied ALS and Litonjua the use of the facilities only *after* ALS had defaulted on its obligation to pay the assessments and dues. The denial of the use of the facilities was the sanction for the prior default incurred by ALS.

In essence, what ALS wants is to use its own prior non-payment as a justification for its future non-payment of its assessments and dues. Stated another way, ALS advances the argument that a contracting party who is guilty of first breaching his obligation is excused from such breach if the other party retaliates by refusing to comply with his own obligation.

This obviously is not the law. In reciprocal obligations, when one party fulfills his obligation, and the other does not, delay by the other begins. Moreover, when one party does not comply with his obligation, the other party does not incur delay if he does not perform his own reciprocal obligation because of the first party's non-compliance. This is embodied in Article 1169 of the Civil Code, the relevant provision of which reads:

"In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with

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[31] Sections 7 and 8 (c) of Master Deed, *Ibid.*, pp. 103-104.

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what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins."

Thus, before ALS incurred its arrearages, petitioner allowed ALS to use the facilities. However, ALS subsequently defaulted and thus incurred delay. It was only then that petitioner disallowed ALS and Litonjua from using the facilities. Clearly, petitioner's denial to ALS of the Condominium facilities, after ALS had defaulted, does not constitute a valid ground on the part of ALS to refuse paying its assessments and dues.

Validity of House Rule 26.3.

Petitioner's House Rules and Regulations ("House Rules" for brevity) expressly authorize denial of the use of condominium facilities to delinquent members. Specifically, House Rule 26.3 provides that:

"26. ASSESSMENTS:

x x x x x x x x x

26.3 Names of unit owners with delinquent accounts who fail to pay two consecutive quarters shall be posted in the bulletin board. *Unit owners with delinquent accounts, their tenants, guests/ visitors and relatives shall not be allowed the use of all facilities of the condominium such as the swimming pool, gym, social hall, etc."* (Italics supplied)

The issue on the validity of House Rule 26.3 was raised for the first time on appeal. It is settled that an issue not raised during trial could not be raised for the first time on appeal as to do so would be offensive to the basic rules of fair play, justice, and due process.[32] Nonetheless, the Court of Appeals opted to address this issue.

Petitioner justifies House Rule 26.3 by invoking Section 36, paragraph 11 of the Corporation Code which grants every corporation the power "to exercise such powers as may be essential or necessary to carry out its purpose or purposes as stated in its Articles of Incorporation." Petitioner was organized for the

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[32] *Victorias Milling Co., Inc. v. Court of Appeals*, 333 SCRA 663 (2000).

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main purpose of holding title to and managing the common areas of the Condominium. Petitioner claims that there is here implied the power to enact such measures as may be necessary to carry out the provisions of the Articles of Incorporation, By-Laws and Master Deed to deal with delinquent members. This, asserts petitioner, includes the power to enact House Rule 26.3 to protect and safeguard the interests not only of petitioner but also of its members.

For their part, ALS and Litonjua assail the validity of House Rule 26.3 alleging that it is *ultra vires*. ALS and Litonjua maintain that neither the Master Deed nor the By-Laws of petitioner expressly authorizes petitioner to prohibit delinquent members from using the Condominium facilities. Being *ultra vires*, House Rule 26.3 binds no one. Even assuming that House Rule 26.3 is *intra vires*, the same is iniquitous, unconscionable, and contrary to morals, good customs and public policy. Thus, ALS claims it can validly deduct the value of the services withheld from the assessments and dues since it was barred from using the Condominium facilities for which the assessments and dues were being collected.

The Court of Appeals sustained respondents' argument and declared House Rule 26.3 *ultra vires* on the ground that petitioner is not expressly authorized by its Master Deed or its By-Laws to promulgate House Rule 26.3.

House Rule 26.3 clearly restricts delinquent members from the use and enjoyment of the Condominium facilities. The question is whether petitioner can validly adopt such a sanction to enforce the collection of Condominium assessments and dues.

We rule that House Rule 26.3 is valid.

Section 45 of the Corporation Code provides:

"Sec. 45. *Ultra vires* acts of corporations. — No corporation under this code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred."

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The term *ultra vires* refers to an act outside or beyond corporate powers, including those that may ostensibly be within such powers but are, by general or special laws, prohibited or declared illegal.[33] The Corporation Code defines an *ultra vires* act as one outside the powers conferred by the Code or by the Articles of Incorporation, or beyond what is necessary or incidental to the exercise of the powers so conferred. Moreover, special laws governing certain classes of corporations, like the Condominium Act, also grant specific corporate powers to corporations falling under such special laws.

The Condominium Act, petitioner's By-Laws and the Master Deed *expressly* empower petitioner to promulgate House Rule 26.3. Section 9 of the Condominium Act provides:

"Section 9. The owner of a project shall, prior to the conveyance of any condominium therein, register a declaration of restrictions relating to such project, which restrictions x x x shall inure to and bind all condominium owners in the project. x x x The Register of Deeds shall enter and annotate the declaration of restrictions upon the certificate of title covering the land included within the project, if the land is patented or registered under the Land Registration or Cadastral acts.

x x x x x x x x x

Such declaration of restrictions, among other things, may also provide:

(a) *As to any management body —*

1. *For the powers thereof, including power to enforce the provisions of the declaration of restrictions*;

x x x x x x x x x

3. Provisions for *maintenance x x x and other services benefiting the common areas*, x x x" (Italics supplied)

The Condominium Act clearly provides that the Master Deed may expressly empower the management body, petitioner in

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[33] Jose C. Vitug, *Pandect of Commercial Law and Jurisprud*ence, 3rd Edition, 1997, p. 466.

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the instant case, to enforce all provisions in the Master Deed and Declaration of Restrictions.

Pursuant to Section 9 (a) (1) and (3) of the Condominium Act, the Master Deed expressly authorizes petitioner to exercise all the powers granted to the management body by the Condominium Act, petitioner's Articles of Incorporation and By-Laws, the Master Deed, and the Corporation Code. Section 3, Part II of the Master Deed reads:

> "Section 3. MANAGEMENT BODY. — The Condominium Corporation to be formed and organized pursuant to Section 7 of Part I, above, shall constitute the management body of the project. *As such management body, the powers of the Condominium Corporation shall be such as are provided by the Condominium Act, by the Articles of Incorporation and the By-Laws of the Corporation, by this instrument and by the applicable provisions of the Corporation Code as are not inconsistent with the Condominium Act.* Among such powers but not by way of limitation, it shall have the *power to enforce the provisions thereof in accordance with the By-Laws of the corporation.*" (Italics supplied)

Thus, the Master Deed clearly empowers petitioner to enforce the provisions of the Master Deed in accordance with petitioner's By-Laws.

Petitioner's By-Laws expressly authorize petitioner's Board of Directors to promulgate rules and regulations on the use and enjoyment of the common areas. Thus, paragraph 2, Section 2 of petitioner's By-Laws states:

> "Without limiting the general nature of the foregoing powers, the Board of Directors shall have the power to enforce the limitations, restrictions, and conditions contained in the Master Deed and Declaration of Restrictions of the project; *promulgate rules and regulations concerning the use, enjoyment and occupancy of the units, common areas and other properties in the condominium project,* to make and collect assessments against members as unit owners to defray the costs and expenses of the condominium project and the corporation and to secure by legal means the observance of the provisions of the Condominium Act, the Master Deed, the Articles

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of Incorporation, these By-Laws, and the rules and regulations promulgated by it in accordance herewith. The members of the corporation bind themselves to comply faithfully with all these provisions."[34] (Italics supplied)

Evidently, the Condominium Act, the Master Deed and petitioner's By-Laws grant petitioner the express power to promulgate rules and regulations concerning the use, enjoyment and occupancy of the common areas.

Moreover, House Rule 26.3, which prohibits delinquent members from using the common areas, is necessary to ensure maintenance of the common areas. Petitioner's purpose in enacting House Rule 26.3 is to enforce effectively the provisions of the Master Deed. House Rule 26.3 is well within the powers of petitioner to adopt as the same is reasonably necessary to attain the purpose for which both petitioner and the Condominium project were created. Thus, Section 7 of the Master Deed declares:

"Section 7. CONDOMINIUM CORPORATION. — A corporation to be known as THE TWIN TOWERS CONDOMINIUM (hereinafter referred to as the "Condominium Corporation"), shall be formed and organized pursuant to the Condominium Act and the Corporation Code to hold title to all the aforestated common areas of the condominium project including the land, to manage THE TWIN TOWERS CONDOMINIUM and *to do such other things as may be necessary, incidental and convenient to the accomplishment of said purposes* x x x"[35] (Italics supplied)

Petitioner would be unable to carry out its main purpose of maintaining the Condominium common areas and facilities if members refuse to pay their dues and yet continue to use these areas and facilities. To impose a temporary ban on the use of the common areas and facilities until the assessments and dues in arrears are paid is a reasonable measure that petitioner may undertake to compel the prompt payment of assessments and dues.

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[34] *Rollo*, p. 25.

[35] *Ibid.*, p. 103.

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Second Issue: Offsetting the value of services withheld against ALS' unpaid assessments and dues.

ALS' claim for reduction of its assessments and dues because of its non-use of the Condominium facilities.

We rule that ALS has no right to a reduction of its assessments and dues to the extent of its non-use of the Condominium facilities. ALS also cannot offset damages against its assessments and dues because ALS is not entitled to damages for alleged injury arising from its own violation of its contract. Such a breach of contract cannot be the source of rights or the basis of a cause of action.[36] To recognize the validity of such claim would be to legalize ALS' breach of its contract.

ALS' claim for unrendered repair services barred by estoppel.

ALS also justifies its non-payment of dues on the ground of the alleged failure of petitioner to repair the defects in ALS' Unit. However, this claim for unrendered repairs was never raised before the SEC Hearing Officer or the SEC *en banc*. The issue on these alleged unrendered repairs, which supposedly caused ALS' Unit to deteriorate, was raised for the first time on appeal. The Court of Appeals did not pass upon the same.

Neither in the proceedings in the SEC nor in the appellate court did ALS present evidence to substantiate its allegation that petitioner failed to render the repair services. Also, ALS failed to establish whether it claimed for the costs of the repair because ALS advanced these expenses, or for the value of damages caused to the Unit by the water leakage.

ALS is therefore barred at this late stage to interpose this claim. In *Del Rosario v. Bonga*,[37] the Court held:

"As a rule, no question will be entertained on appeal unless it has been raised in the court below. Points of law, theories, issues and

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[36] *Asturias Sugar Central v. Pure Cane Molasses Co.*, 60 Phil. 255 (1934).

[37] 350 SCRA 101 (2001).

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arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of due process impel this rule."

As this claim was a separate cause of action which should have been raised in ALS' Answer with Counterclaim, ALS' failure to raise this claim is deemed a waiver of the claim.

Third Issue: Remand of the case to the proper trial court.

Question of fact.

The Court of Appeals ruled that there is a need to remand the case considering that there is no sufficient evidence on record to establish the amount of petitioner's claim against ALS for unpaid assessments and dues.

The question of whether petitioner's claim of ₱994,529.75 for unpaid assessments and dues against ALS is supported by sufficient evidence is a purely factual issue and inevitably requires the weighing of evidence. This Court is not a trier of facts, and it is not the function of this Court to re-examine the evidence submitted by the parties.[38] In cases brought before this Court from the Court of Appeals under Rule 45 of the Rules of Court, this Court's jurisdiction is limited to reviewing errors of law which must be distinctly set forth.[39] In this mode of appeal, the findings of fact of the Court of Appeals and other courts of origin are conclusive.[40]

Jurisprudence is settled that:

"(a)s a rule, the jurisdiction of this Court in cases brought to it from the Court of Appeals . . . is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. As such this Court is not

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[38] *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, 347 SCRA 542 (2000).

[39] *Tan Chun Suy v. Court of Appeals*, 229 SCRA 151 (1994).

[40] *Coca-Cola Bottlers Phils. Inc. v. Court of Appeals*, 229 SCRA 533 (1994).

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duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below."[41]

This rule admits of several exceptions. This Court may review the findings of fact of the Court of Appeals:

"(a) where there is grave abuse of discretion; (b) when the finding is grounded entirely on speculations, surmises or conjectures; (c) when the inference made is manifestly mistaken, absurd or impossible; (d) when the judgment of the Court of Appeals was based on a misapprehension of facts; (e) when the factual findings are conflicting; (f) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee; (g) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and, (h) where the findings of fact of the Court of Appeals are contrary to those of the trial court, or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by the respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record."[42]

However, none of these exceptions exists in the instant case.

The SEC Hearing Officer found that, while petitioner is entitled to collect the unpaid assessments and dues from ALS, petitioner has failed to establish clearly the basis for computing the correct amount of the unpaid assessments and dues. Indeed, there is no evidence laying down the basis of petitioner's claim other than allegations of previous demands and statements of accounts. Whether petitioner has sufficiently established its claim by preponderance of evidence requires an examination of the probative weight of the evidence presented by the parties. Evidently, this is a question of fact the resolution of which is beyond the purview of the petition for review where only errors of law may be raised. On the other hand, the decision of the Court of Appeals, finding insufficient evidence on record, was

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[41] *Fuentes v. Court of Appeals*, 268 SCRA 703 (1997).

[42] *Ibid.*

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made under its power to review both questions of fact and law.

Remand to the proper trial court.

While we sustain the ruling of the Court of Appeals, the case can no longer be remanded to the SEC Hearing Officer. Republic Act No. 8799, which took effect on August 8, 2000, transferred SEC's jurisdiction over cases involving intra-corporate disputes to courts of general jurisdiction or the appropriate regional trial courts. Section 5.2 of R.A. No. 8799 reads:

"5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court; Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/ rehabilitation cases filed as of 30 June 2000 until finally disposed."

Based on the Resolution issued by this Court in AM No. 00-8-10-SC,[43] the Court Administrator and the Securities and Exchange Commission should cause the transfer of the records of SEC-AC Nos. 377 and 378 to the proper regional trial court for further reception of evidence and computation of the correct amount of assessments and dues that ALS shall pay to petitioner.

Fourth Issue: Penalties prescribed in House Rule 26.2.

ALS and Litonjua did not question before either the SEC or the Court of Appeals the validity of the penalties prescribed in the Condominium's House Rule 26.2. Nevertheless, the Court of Appeals ruled that House Rule 26.2 prescribes grossly excessive penalties and interests. The resolution of this issue is not necessary in arriving at a complete and just resolution of this case. At any

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[43] "In Re: Transfer of Cases from the Securities and Exchange Commission to the Regular Courts Pursuant to RA 8799."

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rate, we find the interest and penalties prescribed under House Rule 26.2 reasonable considering the premier location of the Condominium at the heart of Makati City. It is inevitable that ALS' unpaid assessments and dues would escalate because ALS' delinquency started since 1986.

House Rule 26.2 clearly provides for a 24% interest and an 8% penalty, both running annually, on the total amount due in case of failure to pay, to wit:

> "26.2. Late payment of accounts of members shall be charged an interest rate of 24% per annum. In addition, a penalty at the rate of 8% per annum shall be charged on delinquent accounts. The 24% interest shall be imposed on unpaid accounts starting with the 21st day of the quarter until fully paid."

To reiterate, the Condominium Act expressly provides that the Master Deed may empower the management body of the Condominium "to enforce the provisions of the declaration of restrictions."[44] The Master Deed authorizes petitioner, as the management body, to enforce the provisions of the Master Deed in accordance with petitioner's By-Laws. Thus, petitioner's Board of Directors is authorized to determine the reasonableness of the penalties and interests to be imposed against those who violate the Master Deed. Petitioner has validly done this by adopting the House Rules.

The Master Deed binds ALS since the Master Deed is annotated on the condominium certificate of title of ALS' Unit. The Master Deed is ALS' contract with all Condominium members who are all co-owners of the common areas and facilities of the Condominium. Contracts have the force of law between the parties and are to be complied with in good faith.[45] From the moment the contract is perfected, the parties are bound to comply with what is expressly stipulated as well as with what is required by the nature of the obligation in keeping with good faith, usage

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[44] Section 9 (b) (1), Condominium Act.

[45] *Pilipinas Hino, Inc. v. Court of Appeals*, 338 SCRA 355 (2000).

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and the law.[46] Thus, when ALS purchased its Unit from petitioner, ALS was bound by the terms and conditions set forth in the contract, including the stipulations in the House Rules of petitioner, such as House Rule 26.2.

In sum, as a member of petitioner, ALS is indisputably bound by the Condominium's House Rules which are authorized by the By-Laws, the Master Deed and the Condominium Act.

Award of attorney's fees.

The award of attorney's fees as damages is the exception rather than the rule. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.[47] Counsel's fees are not awarded every time a party prevails in a suit.[48] An award of attorney's fees and expenses of litigation is proper under the instances provided for in Article 2208 of the Civil Code, one of which is where the defendant acted in gross and evident bad faith. In this case, however, we find no cogent reason to award attorney's fees in the absence of showing of gross and evident bad faith on the part of ALS in refusing to satisfy petitioner's claim.

WHEREFORE, the petition is *GRANTED* and the assailed Decision of the Court of Appeals is *SET ASIDE*. ALS Management & Development Corporation is ordered to pay Twin Towers Condominium Corporation all overdue assessments and dues, including interest and penalties from date of default, as shall be determined by the proper Regional Trial Court in accordance with this Decision. The proper Regional Trial Court shall complete the computation within sixty (60) days from its receipt of this Decision and the records of SEC-AC Nos. 377 and 378. Costs of suit against ALS Management & Development Corporation.

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[46] Article 1315 of the Civil Code.

[47] *Philtranco Service Enterprises, Inc. v. Court of Appeals*. 273 SCRA 562 (1997).

[48] *Ibid.*

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SO ORDERED.

Davide, Jr. C.J., (Chairman), Vitug, and *Azcuna, JJ.,* concur.

Ynares-Santiago, J., on leave.

THIRD DIVISION

[G.R. No. 129428. February 27, 2003]

BENJAMIN NAVARRO and ROSITA FORTEA, *petitioners, vs.* **SECOND LAGUNA DEVELOPMENT BANK, and SPOUSES ISAAC GUZMAN and VILMA ESPORLAS,** *respondents.*

SYNOPSIS

Petitioners spouses Benjamin and Rosita Navarro, together with Leticia, Esther, Luciana and Leoniza, all surnamed Navarro, were co-owners of a parcel of land covered by TCT No. 244200. On March 18, 1978, spouses Donalito Velasco and Esther Navarro, conspiring with the latter's sister Luciana Navarro, executed a falsified Deed of Absolute Sale wherein they made it appear that the entire lot was sold to said spouses Velasco. TCT No. 114526 in the names of spouses Velasco covering the property was accordingly issued. Subsequently, spouses Velasco mortgaged the property to respondent Bank to secure payment of a loan. On June 30, 1987, the respondent Bank, foreclosed the mortgage when spouses Velasco failed to pay their loan. On August 8, 1988 and January 5, 1990, petitioners, introducing themselves as attorneys-in-fact of Esther Navarro-Velasco, wrote the respondent Bank, offering to redeem the property. However, they failed to do so. Hence, ownership thereof was consolidated in the name of respondent Bank and a new TCT was thereafter issued in its favor. On March 26,